



208.345.6933 • PO Box 844, Boise, ID 83702 • [www.idahoconservation.org](http://www.idahoconservation.org)

7/20/18

Scott R. Leibsle DVM, DABVP  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
Boise, ID 83712

Submitted via email: [scott.leibsle@isda.idaho.gov](mailto:scott.leibsle@isda.idaho.gov)

**RE: Idaho Conservation League's Justification for Not Proceeding with "Sunset Clause" Rulemaking for 2019 Legislative Session**

Dear Mr. Leibsle:

Thank you for the opportunity to provide justification as to why the Idaho State Department of Agriculture (ISDA or "the Department") should not proceed with dismissing portions of the current negotiated rulemaking and continuing on with only addressing the "sunset clause" petition for the 2019 Legislative Session.

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom are interested in ensuring that dairies in Idaho are adequately regulated so as to ensure the protection of Idaho's groundwater, surface water and air resources.

On June 13<sup>th</sup>, 2018, ICL received notification from ISDA regarding the negotiated rulemakings the Department was planning to conduct in preparation for the 2019 Legislative Session. Of particular interest to ICL was the negotiation of the Rules Governing Dairy Byproduct, rules that ICL regularly participates in as an interested stakeholder. ICL checked ISDA's webpage for this rulemaking, and understood that the rulemaking was being convened to address three items: the removal of the "sunset clause" for phosphorus threshold soil testing, consideration of a "margin of error" standard for soil tests, and discussion around updating the 1999 NRCS 590 guidance document with the more recent 2013 version.

*RE: Idaho Conservation League Justification for Not Proceeding with "Sunset Clause" Rulemaking for 2019 Legislative Session*

*Page 1 of 2*

ICL's participation in this rulemaking was taken in good faith that this suite items was to be discussed and negotiated. As such, we see it as inappropriate for the Department to withdrawal two of these items – the “margin of error” standard and NRCS 590 discussion – and consider proceeding only with the “sunset clause” negotiations.

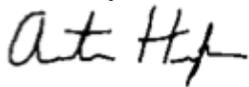
Each of the three items listed in the public notice for negotiated rulemaking needs to be addressed. It's ineffective to only address the low-hanging fruit items while not simultaneously addressing the remaining pressing issues. Further, this approach removes incentives for diverse groups to come to the table and truly negotiate rule changes. Allowing a particular group or groups to get their desired outcome without having to engage and negotiate on related issues degrades the true intent of the rulemaking process.

Per Idaho Code 67-5220(2), “the notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule.” The consideration to continue on with only addressing the “sunset clause” of this rulemaking lacks such a consensus; thus, proceeding in such a manner would be inconsistent with I.C. 67-5220(2).

In summary, we disagree with a continued rulemaking that focuses on the “sunset clause” while deferring discussion on soil test error values and updating incorporations from the NRCS 590 guidelines. Such an approach is ineffective at addressing relevant, pressing issues and is also inconsistent with Idaho Code. We believe the best path forward is for ISDA to defer this entire rulemaking to a later date, such as the summer of 2019.

Please do not hesitate to contact me at 208-345-6933 ext. 23 or [ahopkins@idahoconservation.org](mailto:ahopkins@idahoconservation.org) if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,



Austin Hopkins  
Conservation Assistant